Yusuf bin Sudin v Suruhanjaya Perkhidmatan Polis & Anor

HIGH COURT (MELAKA) — CIVIL SUIT NO 21–4 OF 1997
LOW HOP BING J
27 OCTOBER 2004

Administrative Law — Exercise of administrative powers — Dismissal from service — Police force — Rules of natural justice — procedural fairness — Whether infringement of rights by not giving information and documents even if not requested for — Federal Constitution art 135(2)

Administrative Law — Exercise of administrative powers — Procedural fairness — Rules of natural justice — Whether unfair to not to give oral hearing — Federal Constitution art 135(2)

The plaintiff was an Assistant Superintendent of Police ('ASP') in the Royal Malaysian Police Force ('the police force'). Vide a letter, the first defendant informed the plaintiff of its intention to dismiss the plaintiff from the police force and directed the plaintiff to show cause why he should not be dismissed ('the show-cause letter'), pursuant to general order 26 of the Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 ('the GO'), in relation to five charges brought by the first defendant against the plaintiff. The plaintiff was given the opportunity to make written representation to the first defendant through the Inspector General of Police not later than 21 days from the date of receipt of the show-cause letter.

The plaintiff had vide a letter sent his 40-page representation ('representation') to the first defendant wherein he denied all the five charges. The first defendant has considered the plaintiff's representation and the finding showed that the plaintiff's representation has not shown sufficient cause. As such, the first defendant vide a letter dismissed the plaintiff from the police force. This was plaintiff's claim against the defendants, inter alia for a declaration that the plaintiff's dismissal from the police Force is unlawful, unconstitutional, void and of no effect on the grounds that the rules of natural justice were patently contravened, resulting in the infringement of his rights under art 135(2) of the Federal Constitution as the information and documentary evidence in the first defendant's possession was never given to the plaintiff and the defendant's failure to hold an oral inquiry is lack of procedural fairness in the decision making process.

Held, dismissing plaintiff's claim with costs:

(1) The plaintiff has given his representation without having to ask for any information from the defendants. The defendants have actually taken into account the plaintiff's representation and so there is no denial of any rules of natural justice or procedural fairness (see para 31).

(2) The plaintiff has been given a reasonable opportunity of being heard, in accordance with the requirement enshrined in art 135(2) Federal Constitution and GO 26(4). The right to be heard given by art 135(2) does not require that the person concerned be given an oral hearing. The failure to give the plaintiff an oral hearing has occasioned no procedural unfairness (see paras 39, 45 and 46).

[**Bahasa Malaysia summary**

Plaintif adalah Penolong Penguasa Polis ('PPP') di dalam Polis Di Raja Malaysia ('pasukan polis'). Melalui satu surat, defendan pertama memaklumkan kepada plaintif keinginannya untuk memberhentikan plaintif dari pasukan polis dan mengarahkan plaintif untuk tunjuk sebab kenapa beliau tidak harus diberhentikan ('surat tunjuk sebab'), menurut perintah am 26 Perintah-perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab D) 1980 ('Perintah Am tersebut'), berkenaan dengan lima tuduhan yang di bawa oleh defendan pertama terhadap plaintif. Plaintif diberikan peluang untuk membuat representasi bertulis kepada defendan pertama melalui Ketua Polis Negara tidak lebih dari 21 hari dari tarikh penerimaan surat tunjuk sebab.

Plaintif melalui satu surat menghantar 40 muka surat representasinya kepada defendan pertama di mana dia menafikan kelima-lima tuduhan tersebut. Defendan pertama telah mengambil kira representasi plaintif dan keputusan menunjukkan representasi plaintif tidak menunjukkan sebab yang mencukupi. Oleh itu, defendan pertama melalui surat memberhentikan plaintif dari pasukan polis. Ini adalah tuntutan plaintif terhadap defendan, inter alia untuk satu deklarasi bahawa pemberhentian plaintif dari pasukan polis adalah menyalahi undang-undang, bertentangan dengan perlembagaan, terbatal dan tak berkesan atas alasan peraturan keadilan asasi telah dicabuli, mengakibatkan pelanggaran haknya di bawah art 135(2) Perlembagaan Persekutuan kerana informasi dan dokumen yang berada dengan defendan pertama tidak diberi kepada plaintif dan kegagalan defendan untuk mengadakan perbicaraan lisan kegagalan keadilan prosedur dalam proses membuat keputusan.

Diputuskan, menolak tuntutan plaintif dengan kos:

(1) Plaintif telah memberikan representasinya tanpa meminta apa-apa informasi dari defendan. Defendan sebenarnya telah mengambil kira representasi plaintif oleh itu tiada penafian peraturan keadilan asasi atau keadilan prosedur (lihat perenggan 31).

(2) Plaintif telah diberikan peluang yang munasabah untuk didengar, menurut apa yang termaktub di dalam art 135(2) Perlembagaan Persekutuan dan perintah am 26(4). Hak untuk didengar yang diberi oleh art 135(2) tidak perlukan untuk orang yang berkenaan diberikan perbicaraan secara

lisan. Kegagalan untuk memberikan perbicaraan secara lisan kepada plaintif tidak mengakibatkan ketidakadilan prosedur (lihat perenggan-perenggan 39, 45 dan 46).]

Notes

For cases on dismissal of a public servant, see 1 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 28–31.

For cases on dismissal of a police officer, see 10 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 1148–1174.

For cases on disciplinary proceedings involving public servants, see 10 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 1792–1798.

Cases referred to

Ang Seng Wan v Suruhanjaya Polis Di Raja Malaysia & Anor [2002] 1 CLJ 493 (refd)

B Surinder Singh Kanda v The Government of the Federation of Malaya [1962] MLJ 169 (refd)

Ganasan a/I Marimuthu v Public Services Commission [1998] 4 MLJ 280 (refd)

Ghazi bin Mohd Sawi v Mohd Haniffbin Omar, Ketua Polis Negara, Malaysia & Anor [1994] 2 MLJ 11 (refd)

Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi a/I K Perumal [2001] 2 MLJ 417 (refd)

Raja Abdul Malek Muzaffar Shah b Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & 2 Ors [1995] 1 AMR 855 (refd)

Legislation referred to

Federal Constitution art 135(2)

Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 GO 26

Christopher Fernando (Aris Rizal Christopher Fernando & Co) for the plaintiff.

Mahamad Naser bin Disa (Peguam Kanan Persekutuan) for the defendant.

Low Hop Bing J:

I Plaintiff's Claim

[1] This is the plaintiff's claim against the defendants for a declaration that the plaintiff's dismissal from the Royal Malaysian Police Force ('the Police Force') is unlawful, unconstitutional, void and of no effect and that the plaintiff is still an Assistant Superintendent of Police ('ASP') in the Police Force and entitled to all the salaries, emoluments and benefits due as such ASP, and also for damages, costs and interest.

II Facts of the Case

[2] The parties have set out the statement of agreed facts, which I shall now consider together with the plaintiff's bundle of documents and bundle of pleadings filed pursuant to direction of the court before the hearing of this action, whereupon I have arrived at the finding of facts, which now follow.

[3] Prior to his dismissal, the plaintiff had been an ASP in the Police Force, and hence an employee of the second defendant.

[4] Vide letter dated 30 June 1993, the first defendant informed the plaintiff of its intention to dismiss the plaintiff from the Police Force and directed the plaintiff to show cause why he should not be dismissed ('the show-cause letter'), pursuant to general O 26 of the Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 ('GO (D) 26') in relation to five charges brought by the first defendant against the plaintiff, viz:

(1) Bahawa anda, seorang Pegawai Awam iaitu Penolong Penguasa Polis, di dalam Pasukan Polis Di Raja Malaysia, semasa bertugas sebagai PP Cawangan D7, IPK Negeri Sembilan telah didapati tidak jujur iaitu telah menerima wang sogokan bulanan sebanyak RM1,000 sebulan dari seorang penganjur kegiatan empat ekor haram bernama Chong Lee Lin @ Lin Chai (KP: 0216980) melalui Ee Ten (KP: 8204774) dalam tempoh mulai Januari 1990 hingga September 1990 di No.30, Jalan Tunku Munawir, Seremban, Negeri Sembilan untuk memberi perlindungan ke atas kegiatan empat ekor haram yang dijalankan oleh sindiketnya di sekitar Bandar Seremban, Negeri Sembilan dalam tempoh yang berkenaan dan oleh yang demikian kamu telah melakukan satu kesalahan tatatertib di bawah Perintah Am 4(2) (f), Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D'), 1980.

(2) Bahawa kamu, seorang pegawai awam iaitu Penolong Penguasa Polis di dalam Pasukan Polis Di Raja Malaysia, semasa bertugas sebagai PP Cawangan D7, IPK Negeri Sembilan telah didapati tidak bertanggungjawab, iaitu kamu telah tidak mengambil tindakan polis ke atas lima orang penganjur kegiatan empat ekor haram bernama Chong Lee Lin @ Lin Chai (KP: 0216980), Khu Tee Sing @ Ah Seng (KP: 7695099), Lue Chan Kong @ Siau Lee (KP: 2005446), Chong Cham (KP: 2473143) dan Wee Loke Choon @ Ah Choon (KP: 5146858) serta sindiket mereka dalam tempoh mulai Januari 1990 hingga September 1990 bersabit kegiatan empat ekor haram yang dijalankan oleh mereka di sekitar Bandar Seremban, Negeri Sembilan dalam tempoh yang berkenaan dan oleh yang demikian kamu telah melakukan satu kesalahan tatatertib di bawah Perintah Am 4(2)(g), Perintah-Perintah Am, Pegawai Awam (Kelakuan dan Tatetertib) (Bab 'D'), 1980.

(3) Bahawa anda, seorang Pegawai Awam iaitu Penolong Penguasa Polis di dalam Pasukan Polis Di Raja Malaysia, semasa bertugas sebagai PP Cawangan D7, IPK Negeri Sembilan telah didapati tidak bertanggungjawab, iaitu kamu telah tidak melaporkan kepada pegawai atasan mengenai kegiatan empat ekor haram yang dijalankan oleh Chong Lee Lin @ Lin Chai (KP: 0216980), Khu Tee Sing @ Ah Seng (KP: 7695099), Lue Chan Kong @ Siau Lee (KP: 2005446), Chong Cham (KP: 2473143) dan Wee Loke Choon @ Ah Choon (KP: 5146858) serta sindiket mereka di sekitar Bandar Seremban, Negeri Sembilan, dalam tempoh mulai Januari 1990 hingga September 1990 dan oleh

yang demikian kamu telah melakukan satu kesalahan tatatertib di bawah Perintah Am 4(2)(g), Perintah-Perintah Am, Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D'), 1980.

(4) 'Bahawa kamu, seorang pegawai awam iaitu Penolong Penguasa Polis, di dalam Pasukan Polis DiRaja Malaysia, semasa bertugas sebagai PP Cawangan D7, IPK Negeri Sembilan telah didapati berkelakuan yang dianggap sebagai membiarkan kepentingan persendirian kamu bercanggah dengan kewajipan-kewajipan awam kamu, iaitu kamu telah menjalin perhubungan yang erat dengan seorang penganjur kegiatan empat ekor haram bemama Chong Lee Lin @ Lin Chai (KP: 0216980) di antara Mac 1990 hingga September 1990 dengan mengetahui ianya adalah penganjur kegiatan empat ekor haram di sekitar Bandar Seremban, Negeri Sembilan, sehingga menjejaskan kegunaan kamu sebagai PP Cawangan D7, IPK Negeri Sembilan dan oleh yang demikian kamu telah melakukan satu kesalahan tatatertib di bawah Perintah Am 4(2)(c)(i), Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D'), 1980.

(5) Bahawa kamu, seorang pegawai awam iaitu Penolong Penguasa Polis, di dalam Pasukan Polis DiRaja Malaysia, semasa bertugas sebagai PP Cawangan D7, IPK Negeri Sembilan telah didapati berkelakuan yang dianggap sebagai membiarkan kepentingan persendirian kamu bercanggah dengan kewajipan-kewajipan awam kamu, iaitu kamu telah menjalin perhubungan yang erat dengan seorang penganjur kegiatan empat ekor haram bernama Khu Tee Sing @ Ah Seng (KP: 7695099), di antara Mei 1990 hingga September 1990 dengan mengetahui ianya adalah penganjur kegiatan empat ekor haram di sekitar Bandar Seremban, Negeri Sembilan, sehingga menjejaskan kegunaan kamu sebagai PP Cawangan D7, IPK Negeri Sembilan dan oleh yang demikian kamu telah melakukan satu kesalahan tatatertib di bawah Perintah Am 4(2)(c)(i), Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D'), 1980.

[My translation:

(1) That you, being a Public Officer, to wit, Assistant Superintendent of Police at the time of carrying out the duties of an investigating officer in Branch D7 in the Negeri Sembilan Police Contingent Headquarters, was found to be dishonest, to wit, received monthly bribes of RM 1,000 from an operator of illegal four-digit activities from one Chong Lee Lin @ Lin Chai (IC: 0216980) through one Ee Ten (IC: 8204774) for the period from January 1990 to September 1990 at No. 30, Jalan Tunku Munawir, Seremban, Negeri Sembilan in order to give protection to the said illegal four-digit activities carried out by his syndicate around the town of Seremban, Negeri Sembilan for the said period and you have thereby committed a disciplinary offence under General Order 4(2)(f), Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980.

(2) That you, being a Public Officer, to wit, Assistant Superintendent of Police in the Royal Malaysia Police Force, at the time of carrying out the duties of an investigating officer in Branch D7 in the Negeri Sembilan Police Contingent Headquarters, was found to be irresponsible, to wit, you have failed to take police action against five operators of illegal four-digit activities viz Chong Lee Lin @ Lin Chai (IC: 0216980), Khu Tee Sing @ Ah Seng (IC: 7695099, Lue Chan Kong @ Siau Lee (IC: 2005446), Chong Cham (IC: 2473143) and Wee Loke Choon @ Ah Choon (IC: 5146858) and their syndicate, for the period from January 1990 to September 1990 in connection with the illegal

four-digit activities carried out by them around the town of Seremban in the said period and you have thereby committed a disciplinary offence under General Order 4(2)(g) of the Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980.

(3) That you, being a Public Officer, to wit, Assistant Superintendent of Police in the Royal Malaysian Police Force, at the time of carrying out the duties of an investigating officer in Branch D7 in the Negeri Sembilan Police Contingent Headquarters, was found to be irresponsible, to wit, you have failed to report to your superior officer in connection with the illegal four-digit activities carried out by Chong Lee Lin @ Lin Chai (IC: 0216980), Khu Tee Sing @ Ah Seng (IC: 7695099, Lue Chan Fong @ Siau Lee (IC: 2005446), Chong Cham (IC: 2473143) and Wee Loke Choon @ Ah Choon (IC: 5146858) and their syndicate around the town of Seremban for the period from January 1990 to September 1990 and that you have committed a disciplinary offence under General Order 4(2)(g) of the Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980.

(4) That you, being a public officer, to wit, an Assistant Superintendent of Police in the Royal Malaysian Police Force, at the time of carrying out the duties of an investigating officer in Branch D7 in the Negeri Sembilan Police Contingent Headquarters, was found to have conducted yourself in a manner likely to cause a reasonable suspicion that you have allowed your private interests to come into conflict with your public duty, to wit, you have established a close relationship with an operator of illegal four-digit activities by the name of Chong Lee Lin @ Lin Chai (IC: 0216980) between March 1990 and September 1990 knowing that he was an operator of illegal four-digit activities around the town of Seremban, Negeri Sembilan, so as to impair your usefulness as an investigating officer of Branch D7 of the Negeri Sembilan Police Contingent Headquarters and you have thereby committed a disciplinary offence under General Order 4(2) (c)(i) of the Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980.

(5) That you, being a public officer, to wit, an Assistant Superintendent of Police in the Royal Malaysian Police Force, at the time of carrying out the duties of an investigating officer in Branch D7 in the Negeri Sembilan Police Contingent Headquarters, was found to have conducted yourself in a manner likely to cause a reasonable suspicion that you have allowed your private interests to come into conflict with your public duty, to wit, you have established a close relationship with an operator of illegal four-digit activities by the name of Khu Tee Sing @ Ah Seng (IC: 7695099) between May 1990 and September 1990 knowing that he was an operator of illegal four-digit activities around the town of Seremban, Negeri Sembilan, so as to impair your usefulness as an investigating officer of Branch D7 of the Negeri Sembilan Police Contingent Headquarters and you have thereby committed a disciplinary offence under General Order 4(2)(c)(i) of the Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980.]

[5] For brevity and convenience, a reference hereinafter to a general order is a reference to that order in the Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 ('GO (D)') and a reference to an article is a reference to that article in the Federal Constitution.

[6] The plaintiff was given the opportunity to make written representation to the first defendant through the Inspector General of Police ('IGP') not later than 21 days from the date of receipt of the show-cause letter.

[7] In response thereto, the plaintiff had vide letter dated 29 July 1993 sent his 40-page representation ('representation') to the first defendant relying on the materials he had in his possession. The plaintiff did not see the need to request for any particulars from the first defendant and was able to reply to the charges by way of his representation to the first defendant.

[8] The contents of his representation include, inter alia:

1. His duties as an investigating officer in Branch D7;
2. His concept of performing his duties;
3. The shortcomings in Branch D7 such as scarcity of information from the public concerning illegal four-digit activities ('4-D activities') and the shortage of officers in this branch, thereby affecting his efforts in combating illegal 4-D activities;
4. In response to the first charge, the plaintiff denied knowing the said Ee Ten and denied having collected the monthly bribe of RM1,000 through him for the period stated therein. The plaintiff stated that he had conducted several raids and recommended that the said Chong Lee Lin to be placed under restricted residence. He further denied knowing of the address in the first charge;
5. The plaintiff described the second charge as false and claimed that he had conducted numerous raids and recommended that the people named therein be detained under restricted residence, but added that due to insufficient evidence, no action could be taken against them;
6. The plaintiff described the third charge as patently false and claimed that he had consistently reported the people named therein to his superiors at several meetings, of which he said the officers in Bukit Aman were aware;
7. The plaintiff denied the fourth charge and claimed that he had conducted several raids which included Chong's syndicate, and that he had recommended restricted residence for Chong and informed the officer in charge of criminal investigation and Bukit Aman officers about this; and
8. The fifth charge was also denied by the plaintiff who stated that he had conducted numerous raids against the said Khu Tee Sing.

[9] The plaintiff's representation has been considered by the first defendant and the finding of the first defendant was that the plaintiff's representation has not shown sufficient cause, as a result of which the first defendant vide

letter dated 15 August 1994 informed the plaintiff of the plaintiffs dismissal from the Police Force.

III Challenges to the Charges

[10] Mr Christopher Fernando, learned counsel for the plaintiff, submitted that the charges were vague and imprecise and that it was almost impossible for anyone to answer meaningfully. He added that there was duplicity in the first, second and third charges.

[11] Learned senior federal counsel Mr Mohd Naser bin Disa contended for the defendants that the charges are clear, which the plaintiff has understood as the plaintiff has in his representation also pleaded in mitigation in relation to these charges, without the need to request for any documents, as indeed the plaintiff has not applied for any document from the defendants.

[12] Upon a proper perusal of all the aforesaid disciplinary charges, I am of the view that they contain the particulars of all the allegations in the disciplinary offences preferred against the plaintiff and that they are clear, precise and comprehensive. They do serve the purpose of informing the plaintiff of the various allegations against him in order to enable him to reply thereto. Had the charges been vague and imprecise as claimed by the plaintiff, it would have been impossible for the plaintiff to make his representation to the first defendant. In para 2 of his representation, he had expressed his thanks to the first defendant for affording him the opportunity to reply to all the five charges on the basis of all the materials, which he had in his possession. The actual words used by the plaintiff were:

> Walaubagaimanapun saya berterima kasih kepada Suruhanjaya Pasukan Polis kerana memberi peluang untuk menjawab tuduhan yang dinyatakan di dalam kelima-lima alasan tindakan dengan bahan-bahan yang ada pada saya.

[13] I am therefore unable to sustain the contention advanced for the plaintiff.

IV Agreed Issue for Determination

[14] At this juncture of my judgment, it is significant to state that the parties have agreed that the issue for determination by the court is:

> Whether the plaintiff's dismissal from the Police Force was fair and valid, having regard to the rules of natural justice, the Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 and art 135(2) of the Federal Constitution?

V Article 135(2)

[15] It was argued for the plaintiff that the rules of natural justice were patently contravened in the dismissal of the plaintiff, resulting in the infringement of his rights under art135(2) as the information and documentary evidence

(collectively referred to as 'information') in the first defendant's possession was never given to the plaintiff, who also additionally alleged further the defendant's failure to hold an oral inquiry and lack of procedural fairness in the decision-making process. *Ang Seng Wan v Suruhanjaya Polis Di Raja Malaysia & Anor* [2002] 1 CLJ 493; *B Surinder Singh Kanda v The Government of the Federation of Malaysia* [1962] MLJ 169; and *Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Polis & 2 Ors* [1995] 1 AMR 855, were referred to.

[16] For the defendants, it was contended that the defendants have complied with the relevant provisions of the GO (D) in that the plaintiff has been served with the show-cause letter which has clearly set out the five charges against the plaintiff who in turn has been given the opportunity to make his representation which the plaintiff did together with his plea in mitigation, after having understood the charges, and that the plaintiff has been afforded the right to be heard under art 135(2), in line with *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi a/l KPerumal* [2001] 2 MLJ 417.

[17] He added that the question of forming a committee of inquiry did not arise as the facts and the charges are clear, and that *Ang Seng Wan*, supra, has no application since the facts are different. He relied further on *Ghazi bin Mohd Sawi v Mohd Haniff bin Omar, Ketua Palis Negara, Malaysia & Anor* [1994] 2 MLJ 11 and *Ganasan a/l Marimuthu v Public Services Commission* [1998] 4 MLJ 280 to support the defendants' contention herein.

[18] Regarding the advice of the Privy Council in *B Surinder Singh Kanda*, supra, the defendants' view was that the plaintiff has cited it out of context as it was inapplicable.

[19] In relation to the plaintiffs contention that the information in the first defendant's possession was never given to the plaintiff, in my view the short answer is that there has been no request by the plaintiff for the information and so this is a non-issue.

[20] I shall now consider the authorities cited for the plaintiff.

[21] In *B Surinder Singh Kanda*, supra, the plaintiff, a police inspector sought a declaration that his dismissal from the Police Force was void on the ground, inter alia, that it was effected without being given a reasonable opportunity of being heard at the board of inquiry held by the Police Force, and that this was contrary to art135(2). This ground was upheld by Rigby J in the High Court.

[22] On appeal by the defendant, the Court of Appeal held that the plaintiff has been validly dismissed.

[23] However, on further appeal, the Privy Council, in holding that the dismissal was void enunciated that the right to be heard carries with it the

right of the accused to know the case made against him, the evidence given and the statements made affecting him; and he must be given a fair opportunity to correct or contradict them, adding that whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the other.

[24] It is significant to observe that the facts there revealed that the Report of the Board of Inquiry contained a severe condemnation of the plaintiff. That Report was sent to the adjudicating officer before he sat to enquire into the charge. The adjudicating officer read it and had full knowledge of its contents. The plaintiff never had it nor an opportunity of dealing with it. He never got it until the fourth day of the hearing before Rigby J. Upon a query by Rigby J, the learned legal adviser for the defendant made the Report available to the plaintiff and his counsel. The Report dealt in detail with the evidence of each witness heard by the Board, and expressed views as to the credibility of each witness, and the weight to be attached to his statement.

[25] The question for determination there was, whether the hearing by the adjudicating officer was vitiated by his being furnished with the Report without the plaintiff being given an opportunity of correcting or contradicting it. Rigby J, so did the Privy Council, gave the answer in the affirmative.

[26] In *Raja Abdul Malek Muzzaffar Shah*, supra, the Court of Appeal through the judgment of Gopal Sri Ram JCA concerning an appeal of alleged dismissal under art135(2) dealt with the following issues:

Issue 1:

Whether the deprivation of an oral hearing was an unfair procedure, which deprived of his constitutional right to a reasonable opportunity to be heard under art 135(2)? and

Issue 2:

Whether there was procedural unfairness as the defendants had taken into account materials, which were not made available to the plaintiff and upon which the plaintiff was never given an opportunity to comment?

[27] The facts there revealed that the Police Service Commission had informed the plaintiff, ASP Raja Abdul Malek that it was going to institute disciplinary proceedings against the plaintiff under GO (D) 26 in relation to charges comprising gross dereliction of duty, corruption and the making of a false entry. The plaintiff replied and requested an oral hearing before an independent tribunal. He also requested the station diary to refresh his memory. An oral hearing was not held. The Police Service Commission had taken into consideration, inter alia, 'serta lain-lain maklumat yang berkaitan' (and other related information) which was not identified and explained.

[28] The Court of Appeal held:

(1) at pp 865 and 866 that the right to be heard does not include the duty to afford an oral hearing, but cases may arise where, in the light of the peculiar facts,

the failure to afford an oral hearing may result in the decision arrived at being declared a nullity or quashed. On the facts, there was no departure from procedural fairness by the defendants' failure to afford the plaintiff the oral hearing he had asked for, as the charges were well drafted and care was taken to ensure that full particulars were provided and the plaintiff was given sufficient opportunity to rebut the charges including the provision of documents requested by the plaintiff. The answer to issue 1 was in the negative;

(2) at pp 869 and 870, the words 'serta Iain-lain maklumat' (and other related information) were not mere surplusage as the first defendant had taken into account matters that the plaintiff has not been given an opportunity to rebut or comment upon. The answer to issue 2 was in the affirmative.

[29] In my view, the Court of Appeal's answer to issue 1 militates against the contention of the plaintiff in so far as the right to an oral hearing is concerned.

[30] In relation to issue 2, the crucial point there was that the defendants had taken into account materials which were not made available to the plaintiff and upon which the plaintiff was never given an opportunity to comment.

[31] However, the facts before me as narrated above reveal that the plaintiff has given his representation without having to ask for any information from the defendants. The defendants have actually taken into account the plaintiffs representation and so there is in my view no denial of any rule of natural justice or procedural fairness. It is plain to me that the factual background and circumstances before me are clearly distinguishable from those prevailing in *SSurinder Singh Kanda*, supra, and *Raja Abdul Malek*, supra.

[32] In *Ang Seng Wan*, supra, the facts revealed the first defendant had caused the summary of facts, report and statement of witnesses to be circulated to the members of the first defendant without making them available to the plaintiff-appellant. The plaintiff-appellant denied all the four disciplinary charges against him, and gave exculpatory statements to rebut all the charges.

[33] There was also no evidence by the defendants to substantiate all the four charges. The issue before the Court of Appeal was whether the proceeding resulting in the dismissal of the plaintiff-appellant was conducted in accordance with the rules of natural justice, as enshrined in art135(2). Mohd Saari JCA in delivering judgment of the Court made it clear that the decision whether to hold an inquiry or not would depend on the circumstances of each case and that in the circumstances of that case, the fact that there was no evidence whatsoever to contradict the plaintiffs exculpatory statement would justify the holding of an oral inquiry, the omission of which had resulted in the dismissal of the plaintiff in violation of art135(2).

[34] As has been noted above, the facts and circumstances in *B Surinder Singh Kanda*, supra; *Raja Abdul Malek*, supra, and *Ang Seng Wan*, supra, are entirely different from the facts and circumstances in the instant case. I am

A unable to conclude that those three authorities are supportive of the case for the plaintiff herein.

[35] As a matter of law, the opportunity of being heard has been entrenched in art135(2) and GO (D) 26.

B **[36]** Art135(2) is set out below:

> No member of such a service shall be dismissed without being given a reasonable opportunity of being heard.

C **[37]** GO (D) 26 consists of 11 paragraphs prescribing the procedural steps to be followed by way of disciplinary proceedings, in effect incorporating the concept of procedural fairness, including the opportunity of being heard to be afforded to an officer.

[38] In particular, GO 26(4) provides as follows:

D

> If an officer does not furnish any representation within the specified time or if he furnishes a representation, which fails to exculpate himself to the satisfaction of the Appropriate Disciplinary Authority, it shall then proceed to consider and decide on the dismissal or reduction in rank of the officer.

E **[39]** The facts and circumstances in the instant case clearly show that the plaintiff has been served with the show-cause letter together with detailed particulars of the charges against him and that he was given the opportunity of making his representation, which he did. On the finding of facts as unfolded in the narrative above I entertain no doubt that the plaintiff has been given a F reasonable opportunity of being heard, in accordance with the requirement enshrined in art135(2) and GO 26(4).

[40] Further, the plaintiff has clearly understood all the charges against him and has made no attempt or taken any other steps such as applying for further and better particulars or documents. I am unable to uphold the contention G advanced for the defendant.

[41] Support for my finding is to be found in *Utra Badi*, supra, where the respondent, a hospital attendant at the Penang General Hospital, was issued a show-cause letter dated 31 January 1991 by the appellant to institute H disciplinary proceedings on the ground that his urine sample was positive of morphine. In his letter dated 7 February 1991, the respondent denied that he was a drug addict. On 20 March 1991, the appellant vide letter informed him that he had been dismissed, and of his right of appeal which he exercised by letter dated 26 March 1991, where he repeated his denial that he was a drug I addict. His appeal was dismissed and he instituted proceedings against the appellants for wrongful dismissal in the High Court where decision was given in his favour, so also did the Court of Appeal.

[42] Leave to appeal to the Federal Court was granted on two questions viz: **A**

(1) Whether a show-cause letter issued by a public service disciplinary authority, which directed a member of a public service's attention to the possibility of punishment of dismissal or reduction in rank sufficiently, complied with art135(2)?

(2) Does art135(2) require the relevant authority to afford the public officer an oral hearing? **B**

[43] Abdul Malek Ahmad FCJ (now PCA), in delivering the judgment of the Federal Court referred to *Ghazi*, supra; and *Ganasan*, supra, and held that the show-cause letter dated 31 January 1991 conveyed with sufficient clarity and certainty the contemplated punishment of which the respondent had been informed at the earliest available moment should he not be able to exculpate himself of the charge. He had been accorded every opportunity to defend himself as the respondent did by a letter dated 7 February 1991. However, he made no representation as regards the punishment though he has been made aware of. **C** **D**

[44] His Lordship added that there is no separate right to make representations upon the punishment that ought to be meted out to the officer. The words 'it shall then proceed to consider and decide on the dismissal or reduction in rank of the officer' in GO 26(4) does not mean that there should be another separate hearing, as the first appellant was not required to make a finding of guilt. Therefore, no injustice has been occasioned to the respondent by the failure to hear his mitigation separately. **E**

[45] The Federal Court also held that the right to be heard given by art 135(2) does not require that the person concerned be given an oral hearing and it could not be argued that the failure to give the appellant an oral hearing was a denial of justice. **F**

[46] Applying the principles enunciated in *Utra Badi*, supra, to the facts and circumstances of the instant case, I am of the view that the defendants have occasioned no procedural unfairness in the entire decision-making process, which leads to the dismissal of the plaintiff from the Police Force. **G**

VI Conclusion

[47] On the foregoing grounds, in my judgment, the answer to the aforesaid issue for determination is in the affirmative. I therefore hold that the plaintiff's claim is without merits and is hereby dismissed with costs. **H**

Plaintiff's claims dismissed.

Reported by AG Kalidas **I**